

State Employment Relations Board

Board Meeting Minutes

December 18, 2014

The State Employment Relations Board met on December 18, 2014, at 10:00 a.m., at 65 East State Street, 12th Floor, Columbus, Ohio. Present at the meeting were Chair W. Craig Zimpher, Vice Chair Aaron A. Schmidt, and Board Member N. Eugene Brundige.

I. APPROVAL OF MINUTES FOR THE NOVEMBER 6, 2014 BOARD MEETING:

Board Member Brundige moved that the Board approve the minutes for the November 6, 2014 Board meeting. Vice Chair Schmidt seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

Chair Zimpher read the following statement: "Communication to this writer has indicated concern about the Alternative Recommendation proposed, and adopted, pertaining to case number 2014-ULP-07-0106, during the September 11, 2014 SERB meeting. So as to clarify any misunderstanding or misimpression regarding that Recommendation or the "Rationale" provided for its presentation, the Board did not in any manner find or affirm allegations regarding behaviors of any representatives associated with the matter. Nowhere did any Board member imply or ascribe any specific characterization to any participant in the chain of events that led to the unfair labor practice charge. "Allegations" were considered as simply that; the narrative of the Alternative Recommendation therefore did not assign or ascribe validity to such allegations."

II. MEDIATION AND FACT-FINDING MATTERS AT ISSUE:

1. Cases 2012-MED-01-0022 American Association of University Professors and
2012-MED-01-0023 University of Toledo

In this matter the parties have been negotiating for over two years. These discussions have included numerous meetings. On October 30, 2014, the union filed three Unfair Labor Practice Charges alleging the employer; 1.) Refused to Bargain about the number of hours Tenure Track members are required to work; 2.) Failed to respond to a July 2014 proposal on compensation for the College of Nursing Faculty; and 3.) Refused to bargain about the number of hours Lecturers are required to work.

Simultaneously, on October 30, 2014, the union also filed a Motion to Stay the Fact Finding pending the disposition of the above filed Unfair Labor Practice charges.

Since then the union has withdrawn the three unfair labor practice charges, 2014-ULP-10-0218, 0219, and 0220 without prejudice. The union acknowledges these withdrawals negate their Motion to Stay Fact Finding and that it can be dismissed.

Vice Chair Schmidt moved that the Board dismiss the union's Motion for Stay of Fact Finding in Case No. 2012-MED-01-0022 and Case No. 2012-MED-01-0023. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

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2. Case 2014-MED-08-1037 Fraternal Order of Police/Ohio Labor Council, Inc. and Fairfield County Sheriff

On August 19, 2014, a Petition for a Representation Election was filed seeking to decertify Fraternal Order of Police, Ohio Labor Council, Inc. as the exclusive representative for the bargaining unit in Fairfield County Sheriff in Case No. 2014-REP-09-0098.

On August 20, 2014, the Fraternal Order of Police/Ohio Labor Council, Inc. filed a Notice to Negotiate for a new collective bargaining agreement representing Full-time sworn Deputies including Corrections Deputies with the Fairfield County Sheriff in Case No. 2014-MED-08-1037.

Since then on August 27, 2014, the Fairfield County Sheriff has filed a Motion to Stay Negotiations pending the outcome of the above representation petition.

Board Member Brundige moved that the Board grant the Employer's Motion to Stay Negotiations in Case No. 2014-MED-08-1037 pending disposition of Case No. 2014-REP-09-0098. Vice Chair Schmidt seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

3. Case 2014-MED-08-1039 Fraternal Order of Police/Ohio Labor Council, Inc. and Fairfield County Sheriff

On August 19, 2014, a Petition for a Representation Election was filed seeking to decertify Fraternal Order of Police, Ohio Labor Council, Inc. as the exclusive representative for the bargaining unit in Fairfield County Sheriff in Case No. 2014-REP-09-0097.

On August 20, 2014, the Fraternal Order of Police/Ohio Labor Council, Inc. filed a Notice to Negotiate for a new collective bargaining agreement representing Full-time Sergeants and Lieutenants with the Fairfield County Sheriff in Case No. 2014-MED-08-1039.

Since then on August 27, 2014, the Fairfield County Sheriff has filed a Motion to Stay Negotiations pending the outcome of the above representation petition.

Vice Chair Schmidt moved that the Board grant the Employer's Motion to Stay Negotiations in Case No. 2014-MED-08-1039 pending disposition of Case No. 2014-REP-09-0097. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

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III. REPRESENTATION MATTERS AT ISSUE:

1. Case 2014-REP-09-0109 Fraternal Order of Police, Ohio Labor Council, Inc. and United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Local 3056 and Lucas County Sheriff
(January 7, 2015 - January 20, 2015)
2. Case 2014-REP-09-0113 Fraternal Order of Police, Ohio Labor Council, Inc. and Carroll County Sheriff's Office
(January 7, 2015 - January 20, 2015)
3. Case 2014-REP-09-0116 Ohio Patrolmen's Benevolent Association and Fraternal Order of Police, Lodge 15 and City of Parma
(January 7, 2015 - January 20, 2015)
4. Case 2014-REP-10-0117 Library Public Safety Association and International Brotherhood of Teamsters, Local 244 and Cleveland Public Library
(January 7, 2015 - January 20, 2015)
5. Case 2014-REP-10-0118 Ohio Council 8, American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO and Ashland County Board of County Commissioners and Ashland County Department of Job and Family Services
(December 30, 2014 - January 12, 2015)
6. Case 2014-REP-10-0119 Ohio Patrolmen's Benevolent Association and Fraternal Order of Police, Ohio Labor Council, Inc. and Village of Ada, Hardin County (Dispatchers)
(December 30, 2014 - January 12, 2015)
7. Case 2014-REP-10-0120 Ohio Patrolmen's Benevolent Association and Fraternal Order of Police, Ohio Labor Council, Inc. and Village of Ada, Hardin County (Patrol Officers)
(December 30, 2014 - January 12, 2015)
8. Case 2014-REP-10-0121 Fraternal Order of Police, Ohio Labor Council, Inc. and The Ohio State University
(January 13, 2015 - January 26, 2015)
9. Case 2014-REP-10-0122 Kirtland Professional Fire Fighters IAFF Local #3735 and City of Kirtland
(January 7, 2015 - January 20, 2015)

All parties have executed and filed the appropriate Consent Election Agreements.

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Board Member Brundige moved that the Board approve the Consent Election Agreements and direct mail-ballot elections to be conducted during the polling periods indicated. Vice Chair Schmidt seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

10. Case 2014-REP-09-0108 Laborers' Local Union No. 860 and Service Employees International Union, District 1199 and Cuyahoga County (Department of Public Works)

A Rival Employee Organization filed a Petition for Representation Election. The Incumbent Employee Organization requested a hearing. For the reasons stated in the memorandum provided to the Board, directing an election is appropriate.

Vice Chair Schmidt moved that the Board deny the Incumbent Employee Organization's request for a hearing and direct that a mail-ballot election be conducted during a polling period to be established by the Representation Section, in this appropriate unit:

Included: Custodial Workers, Maintenance Repairmen, Auto Mechanic 1, Auto Mechanic 2, Information Clerks (Clerks 2), Groundskeeper 1, Stores Clerks, Equipment Operator, Mail Clerks/Messengers, Facilities Parking Attendant, Communication Specialist, Truck Drivers, Window Cleaner, Wall Washer, Photo I.D. Technician, and Radio Dispatcher.

Excluded: All other employees.

As required by Ohio Administrative Code Rule 4117-5-07(A), no later than December 28, 2014, the Employer shall serve on the parties and shall file with SERB, a numbered, alphabetized election-eligibility list containing the names and home addresses of all employees eligible to vote as of the last pay period just prior to December 18, 2014. The Employer shall also provide the election-eligibility list to SERB in label format.

Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

11. Case 2014-REP-09-0112 Teays Valley Education Association, OEA/NEA and Teays Valley Local School District

The Employee Organization filed a Petition for Amendment of Certification seeking to change the Employee Organization's name. The Employer submitted an e-mail stating that it does not oppose the name change. The proposed amendment appears appropriate.

Board Member Brundige moved that the Board approve the petition and amend the certification accordingly. Vice Chair Schmidt seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

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- 12. Case 2014-REP-10-0127 Delaware Area Career Center Education Association, OEA/NEA and Delaware Area Career Center Board of Education
- 13. Case 2014-REP-11-0131 Fraternal Order of Police, Ohio Labor Council, Inc. and City of North College Hill
- 14. Case 2014-REP-11-0134 Ohio Council 8, American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO and Perry County Board of County Commissioners/Perry County Home (d/b/a Fairview Assisted Living)
- 15. Case 2014-REP-11-0135 Ohio Council 8, American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO and City of Bucyrus

The parties jointly filed Petitions for Amendment of Certification and the proposed amendments appear appropriate.

Vice Chair Schmidt moved that the Board approve the jointly filed petitions and amend the units accordingly. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
 Affirmed X Denied _____

- 16. Case 2014-REP-10-0125 Fraternal Order of Police, Ohio Labor Council, Inc. and Clermont County Commissioners

The Employee Organization filed a Request for Recognition. The Employer responded by filing a Petition for Representation Election and objections. The Employer maintains that the proposed unit is comprised of supervisors and therefore are not public employees.

Chair Zimpher moved an alternative recommendation that the Board direct this matter to the Office of the General Counsel for the purpose of conducting an Inquiry by SERB's Staff Attorney to determine whether the employees in question are public employees and if so, to determine an appropriate disposition. Vice Chair Schmidt seconded the motion.

Chair Zimpher called for discussion.

Chair Zimpher read the following rationale for his recommendation: "I propose, in lieu of a Hearing before an Administrative Law Judge, this matter be sent to the Office of the General Counsel for the purpose of conducting an Inquiry. I believe the issues presented in this case can be more efficiently resolved through that process."

Chair Zimpher called for the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
 Affirmed X Denied _____

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17. Case 2014-REP-09-0114 Fraternal Order of Police, Ohio Labor Council, Inc. and Clark County Sheriff

The Employer filed a Petition for Amendment of Certification and has now filed a Request seeking to withdraw it.

Board Member Brundige moved that the Board construe the Employer's letter as a motion to withdraw, grant the motion, and dismiss without prejudice the Petition for Amendment of Certification. Vice Chair Schmidt seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

18. Case 2014-REP-11-0130 Ohio Council 8, American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO and City of Warren

The parties jointly filed a Petition for Amendment of Certification and have now filed a motion seeking to withdraw it.

Vice Chair Schmidt moved that the Board grant the Motion to Withdraw and dismiss without prejudice the Petition for Amendment of Certification. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

19. Case 2014-REP-08-0094 Ohio Council 8, American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO and Brown County Board of County Commissioners and the Brown County Department of Job and Family Services

- There were 25 valid ballots cast
- There were 0 void ballots
- There was 1 challenged ballot
- No Representative received 8 votes
- Ohio Council 8, American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO received 17 votes and prevailed in this election.

20. Case 2014-REP-07-0086 Fraternal Order of Police, Ohio Labor Council, Inc. and Owens Community College

- There were 5 valid ballots cast
- There were 0 void ballots
- There were 0 challenged ballots
- No Representative received 0 votes
- Fraternal Order of Police, Ohio Labor Council, Inc. received 5 votes and prevailed in this election.

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Board Member Brundige moved that the Board certify the election results and certify each prevailing employee organization as the exclusive representative of all employees in the relevant bargaining unit. Vice Chair Schmidt seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
 Affirmed X Denied _____

IV. ADMINISTRATIVE LAW JUDGE RECOMMENDATIONS AT ISSUE:

1. Case 2013-REP-10-0109 Communication Workers of America, Local 4319 and University of Toledo

This matter comes before the State Employment Relations Board ("SERB" or "Board") upon the University of Toledo's ("Employer" or "University") Petition for Clarification of Bargaining Unit, filed on October 25, 2013.

The Communications Workers of America, Local 4319 ("Employee Organization" or "CWA") has been certified by SERB as the exclusive representative of certain employees of the University. In September 2007, the University and CWA agreed to amend the CWA bargaining unit. The parties included the position of Recruitment Officer 2 in the CWA bargaining unit. The University's Office of Undergraduate Admissions employs approximately nine individuals as Recruitment Officer 2s. In March 2013, the position description for the Admissions Office's Recruitment Officer 2 was revised. In September 2013 and early 2014, additional job duties were added to the Office of Undergraduate Admissions Recruitment Officer 2 position description. On October 25, 2013, the University filed the instant Petition for Clarification of Bargaining Unit, requesting that the Board consider whether the nature of the job duties added to the Recruitment Officer 2 job classification excludes the incumbent employees from the bargaining unit as "fiduciaries" in the "unclassified civil service" under Ohio Revised Code ("O.R.C.") § 124.11(A). On November 13, 2013, the Employee Organization filed Objections, asserting that the change in the job duties for the Recruitment Officer 2 position does not warrant the exclusion of these employees from the existing bargaining unit.

On January 30, 2014, the Board directed this matter to an evidentiary hearing to determine the bargaining-unit status of the employees in question. A hearing was held on July 25, 2014, wherein testimonial and documentary evidence was presented. Subsequently, both parties filed post-hearing briefs. On September 30, 2014, the assigned Administrative Law Judge issued a Recommended Determination, finding that the position of Recruitment Officer 2 in the University's Office of Undergraduate Admissions is not an unclassified position within the meaning of O.R.C. § 124.11(A). No exceptions to the Report and Recommendation were filed.

Vice Chair Schmidt moved that the Board take the following actions:

- (1) adopt the Findings of Fact, Conclusions of Law, and Recommendations in the Recommended Determination, finding that the employees who hold the position of Recruitment Officer 2 in the University's Office of Undergraduate Admissions are not fiduciary employees in the unclassified civil service pursuant to O.R.C. § 124.11(A) and, therefore, they are not excluded from the existing bargaining unit established under O.R.C. Chapter 4117;

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- (2) deny the Employer's Petition for Clarification of Bargaining Unit seeking to exclude the Office of Undergraduate Admissions Recruitment Officer 2 position from the existing CWA bargaining unit; and
- (3) dismiss the Petition for Clarification of Bargaining Unit with prejudice.

Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
 Affirmed X Denied _____

2. Case 2014-REP-04-0049 Fraternal Order of Police, Ohio Labor Council, Inc. and Goshen Township Trustees

On April 10, 2014, the Fraternal Order of Police, Ohio Labor Council, Inc. ("Employee Organization" or "Union") filed a Request for Recognition pursuant to Ohio Revised Code ("O.R.C.") § 4117.05(A). The Union seeks to represent "All full-time Captains" employed by the Goshen Township Trustees in the Goshen Township Police Department ("Employer"). In the alternative, the Union requests that the Captains be included in the already existing bargaining unit of Sergeants. On April 29, 2014, the Employer filed Objections to the request, asserting that the single employee in the proposed bargaining unit is a supervisory, confidential, and management level employee and, therefore, he is not a public employee pursuant to O.R.C. § 4117.01(C).

On July 24, 2014, the State Employment Relations Board ("SERB" or "Board") directed this matter to an inquiry to gather information to determine whether the employee in question is a "public employee" pursuant to O.R.C. § 4117.01(C). On August 7, 2014, SERB's General Counsel issued a Notice of Inquiry Date/Procedural Order. SERB's General Counsel and Staff Attorney held an inquiry in this matter on September 24, 2014, at which time, testimony was presented and documentary evidence from both the Employer and the Union was admitted into evidence.

On November 6, 2014, SERB's Staff Attorney submitted a Report and Recommendation to the Board, recommending that the Union's Request for Recognition be dismissed based upon the inquiry findings that the Police Captain is a "supervisory," "confidential," and "management level" employee as defined by O.R.C. § 4117.01(C) and, therefore, excluded from the definition of a "public employee" for purposes of collective bargaining under O.R.C. Chapter 4117.

Board Member Brundige moved that the Board: (1) adopt the Findings of Fact, Conclusions of Law, and Recommendation in the Report, finding that the Police Captain is a "supervisory," "confidential," and "management level" employee as defined by O.R.C. § 4117.01(C) and, therefore, excluded from the definition of a "public employee" under O.R.C. Chapter 4117, and (2) dismiss the Union's Request for Recognition. Vice Chair Schmidt seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
 Affirmed X Denied _____

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4. Case 2014-ULP-06-0083 Buckeye Local Classroom Teachers Association v. Buckeye Local School District Board of Education

On June 9, 2014, the Buckeye Local Classroom Teachers Association ("Charging Party") filed an unfair labor practice charge against the Buckeye Local School District Board of Education ("Charged Party"), alleging that Charged Party violated Ohio Revised Code 4117.11 §§ (A)(1), (A)(2), (A)(5), and (A)(8). On August 14, 2014, the State Employment Relations Board ("Board") found probable cause to believe Charged Party had committed an unfair labor practice, authorized the issuance of a complaint, and directed the matter to hearing.

On November 12, 2014, Charging Party filed a motion to withdrawal the unfair labor practice charge in this case. On November 17, 2014, Counsel for the Board filed a motion to dismiss, indicating that the parties have settled the disputes underlying the unfair labor practice charge. No complaint was issued in this matter.

Board Member Brundige moved that the Board grant the motion to withdraw and the motion to dismiss and dismiss with prejudice the unfair labor practice charge in Case No. 2014-ULP-06-0083. (The Board retains jurisdiction over this matter for purposes of enforcing the parties' settlement agreement, pursuant to O.A.C. Rule 4117-7-06.) Vice Chair Schmidt seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE:	<u>Yes</u>	SCHMIDT:	<u>Yes</u>	ZIMPHER:	<u>Yes</u>
Affirmed	<u>X</u>	Denied	<u> </u>		

5. Case 2014-REP-07-0081 Ohio Association of Public School Employees (OAPSE)/AFSCME Local 4, AFL-CIO and Vermilion Local School District Board of Education

On July 9, 2014, Ohio Association of Public School Employees (OAPSE)/AFSCME Local 4, AFL-CIO ("Employee Organization") filed a Request for Recognition seeking to represent approximately twelve clerical and technology employees of the Vermilion Local School District Board of Education ("Employer"). The Employee Organization submitted substantial evidence demonstrating that a majority of the employees in the proposed bargaining unit wish to be represented by the Employee Organization. The Employer complied with the posting requirements set forth in Ohio Revised Code ("O.R.C.") § 4117.05(A)(2). The Employer filed objections and a Petition for Representation Election. The Employer asserts that the employees in the positions of Administrative Assistant – Admin. Office and Administrative Assistant – Fiscal Office perform job duties that qualify them as "confidential employees" and, therefore, they are exempt from the definition of "public employee" pursuant to O.R.C. § 4117.01(C)(6).

On October 9, 2014, the State Employment Relations Board's ("SERB" or "Board") directed this matter to an inquiry to gather relevant information for the Board to determine whether the two employees in question are "public employees" under O.R.C. Chapter 4117. On November 4, 2014, SERB's Office of General Counsel issued a Notice of Inquiry Date/Procedural Order scheduling the inquiry for December 16, 2014.

On November 25, 2014, the parties filed a letter notifying the Board that they have reached a settlement that eliminates the need for the inquiry in this case. The parties request that the Board either refer the matter to SERB's Representation Section to coordinate a consent

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The alleged wrong to Brinjac was the reference to union activity in his evaluation. That reference was *de minimis* and, overall, he received a very positive performance review.

Board Member Brundige moved that the Board dismiss the charge with prejudice for lack of probable cause to believe that an unfair labor practice has been committed. Vice Chair Schmidt seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

IV. UNFAIR LABOR PRACTICE CHARGE MATTERS AT ISSUE:

1. Case 2013-ULP-12-0366 Middletown Firefighters IAFF Local 336 v. City of Middletown

The unfair labor practice charge alleged that the City violated Ohio Revised Code §4117.11 (A)(5) by refusing to bargain over the process of selecting time off.

Information gathered during the investigation revealed that on February 20, 2014, the Board directed the parties to pre-determination mediation, which was unsuccessful. Upon further review, the City's actions appear to be in accordance with its managerial right.

Vice Chair Schmidt moved that the Board dismiss the charge with prejudice for lack of probable cause to believe that an unfair labor practice has been committed. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

2. Case 2013-ULP-09-0286 Laborers' International Union of North America, Local 860 v. Cuyahoga County

The unfair labor practice charge alleged that the County violated Ohio Revised Code §4117.11 (A)(1), (3) and (5) by unilaterally assigning bargaining-unit work to nonbargaining-unit members in retaliation for exercising their guaranteed rights.

The Investigator will hold the discussion in abeyance pending the outcome of the following recommendation.

Board Member Brundige moved that the Board, without rendering any judgment on the merits, order the parties to pre-determination mediation for a period not to exceed 30 days with instructions to the mediator to report back to the Board at the conclusion of the mediation or the mediation period, whichever comes first, authorize the assigned mediator, after consultation with the parties to issue and e-mail a mediator's procedural order, including date, time, and location of mediation within the time period designated. Vice Chair Schmidt seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

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Board Member Brundige moved that the Board dismiss the charge with prejudice for lack of probable cause to believe that an unfair labor practice has been committed. Vice Chair Schmidt seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

9. Case 2014-ULP-05-0068 Jennifer N. McGinnis v. Ohio Patrolmen's Benevolent Association

The unfair labor practice charge alleged that the Association violated Ohio Revised Code §4117.11 (B)(1) and (6) by failing to timely file a grievance over her termination.

Information gathered during the investigation revealed on June 26, 2014, the Board dismissed the above-charge for lack of probable cause and for being untimely filed. A Motion for Reconsideration was filed. Further review of additional information revealed that the unfair labor practice charge was timely filed. The remaining question is whether the Association knew or about Ms. McGinnis' termination and if so, when. The information in this regard is conflicting and best vetted in a hearing.

Vice Chair Schmidt moved that the Board grant the motion for reconsideration, find probable cause to believe an unfair labor practice has been committed, authorize the issuance of a complaint and refer the matter to an expedited hearing to determine whether the Association violated Ohio Revised Code 4114.11(B)(1) and (6) by failing to timely file a grievance over the termination of Jennifer McGinnis and direct the parties to expedited mediation not to exceed thirty (30) days to run concurrently with the expedited processing of the charge and complaint. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

10. Case 2012-ULP-11-0299 Butler Technology & Career Development Schools Board of Education v. Butler Education Association, OEA/NEA

The unfair labor practice charge alleged that the Association violated Ohio Revised Code §4117.11 (B)(1), (2), and (3) by attempting to deal directly with the administration.

Information gathered during the investigation revealed on January 31, 2013, the Board dismissed the instant charge for lack of probable cause. On February 13, 2013, the school board filed a motion for reconsideration, but did not provide any new or additional information meriting reconsideration.

Board Member Brundige moved that the Board deny Charging Party's Motion for Reconsideration with prejudice. Vice Chair Schmidt seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

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or documentation to support the (A)(1) and (3) allegations.

Vice Chair Schmidt moved that the Board dismiss the charge with prejudice for lack of probable cause to believe that an unfair labor practice has been committed. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

14. Case 2014-ULP-09-0164 Vincent E. Mann v. Lucas Metropolitan Housing Authority

The unfair labor practice charge alleged that the Housing Authority violated Ohio Revised Code §4117.11 (A)(1), (3) and (8) by unjustly terminating Vincent E. Mann and denying him access to the grievance-arbitration procedure.

Information gathered during the investigation revealed that Mr. Mann failed to establish a prima facie case of discrimination and the Housing Authority provided a persuasive rebuttal. Accordingly, Mr. Mann did not provide sufficient information or documentation to support the (A)(1) and (8) allegations.

Board Member Brundige moved that the Board dismiss the charge with prejudice for lack of probable cause to believe that an unfair labor practice has been committed. Vice Chair Schmidt seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

15. Case 2014-ULP-09-0165 Vincent E. Mann v. Ohio Council 8, AFSCME, AFL-CIO and Its Local 2916

The unfair labor practice charge alleged that the Union violated Ohio Revised Code §4117.11 (B)(1) and (6) by failing to file a grievance regarding Vincent E. Mann's termination.

Information gathered during the investigation revealed that by his own admission of guilt, Mr. Mann voided any opportunity for the Union to file a grievance on his behalf. The Union's actions were not arbitrary, discriminatory or in bad faith when it did not file a grievance regarding the termination. Mr. Mann did not provide sufficient information or documentation to support the (B)(1) allegation.

Vice Chair Schmidt moved that the Board dismiss the charge with prejudice for lack of probable cause to believe that an unfair labor practice has been committed. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

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Board Member Brundige moved that the Board dismiss the charge with prejudice for lack of probable cause to believe that an unfair labor practice has been committed and for lack of standing. Vice Chair Schmidt seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

19. Case 2014-ULP-09-0178 Riverside Local Education Association, OEA/NEA v. Riverside Local School District Board of Education

The unfair labor practice charge alleged that the School Board violated Ohio Revised Code §4117.11 (A)(1) and (5) by bargaining in bad faith when it violated the parties' mutually agreed upon ground rules and by failing to maintain the status quo.

Information gathered during the investigation revealed that the District's actions do not rise to the level of an (A)(5) statutory violation. Furthermore, the Union did not provide sufficient information or documentation to support the (A)(1) allegation.

Vice Chair Schmidt moved that the Board dismiss the charge with prejudice for lack of probable cause to believe that an unfair labor practice has been committed. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

20. Case 2014-ULP-10-0191 Clinton-Massie Education Association, OEA/NEA v. Clinton-Massie Local School District Board of Education

The unfair labor practice charge alleged that the School Board violated Ohio Revised Code §4117.11 (A)(1) and (5) by failing to maintain the status quo during negotiations when it unilaterally implemented a freeze on step increases.

Information gathered during the investigation revealed that the matter is purely contractual with no arguable statutory violation. In addition, the charge was filed outside of the 90-day statute of limitations and is therefore, untimely. The Association did not provide sufficient information or documentation to support the (A)(1) allegation.

Board Member Brundige moved that the Board dismiss the charge with prejudice for lack of probable cause to believe that an unfair labor practice has been committed and for being untimely filed. Vice Chair Schmidt seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

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21. Case 2014-ULP-10-0207 Ohio Association of Public School Employees, AFSCME Local 4 and its Local 207 v. South Euclid-Lyndhurst City School District Board of Education

The unfair labor practice charge alleged that School Board violated Ohio Revised Code §4117.11 (A)(1), (2), (5) and (8) by involuntarily transferring two (2) of its members, directly dealing with those employees and unilaterally changing the terms and conditions of employment.

Information gathered during the investigation revealed that on November 12, 2014, the parties filed a Joint Motion for Deferral of the instant charge pending the outcome of the upcoming arbitration between the parties. The parties are currently in the process of finalizing the selection of the arbitrator and scheduling a date. The parties state the grievance and the instant charge relate to the same set of facts.

Vice Chair Schmidt moved that the Board grant the parties' Joint Motion, defer the matter for resolution through the grievance-arbitration procedure and retain jurisdiction in accordance with *In re Upper Arlington Ed Assn*, SERB 92-010 (6-30-92). The parties have thirty (30) days from the issuance of the arbitration award to file a request with the Board seeking review of the remaining issues, if any. If nothing is filed within the thirty (30) days, this Board will assume all issues were resolved in the grievance-arbitration procedure and dismiss the matter. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
 Affirmed X Denied _____

22. Case 2014-ULP-08-0137 Huber Heights Education Association, OEA/NEA v. Huber Heights City School District Board of Education

The unfair labor practice charge alleged that the School Board violated Ohio Revised Code §4117.11 (A)(1) and (3) by retaliating against the Union President, Amy Fugate, when it "involuntarily removed" her from her High School teaching position to a teaching position at the Middle School.

Information gathered during the investigation revealed on October 9, 2014, the Board dismissed the above-referenced charge. On November 5, 2014, the Association timely filed a Motion for Reconsideration, but did not provide any new or additional information meriting reconsideration.

Board Member Brundige moved that the Board deny the Association's motion for reconsideration with prejudice. Vice Chair Schmidt seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
 Affirmed X Denied _____

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23. Case 2014-ULP-08-0134 Greater Dayton Regional Transit Authority v. Amalgamated Transit Union, Local 1385

The unfair labor practice charge alleged that the Union violated Ohio Revised Code §4117.11 (B)(3) by failing to bargain collectively when it by-passed the Employer's designated representative.

Information gathered during the investigation revealed that on August 5th, the Union's President attended a Board of Trustees meeting and spoke regarding a grievance-arbitration matter. The question to be resolved in this case is whether the Union's President, Glenn Salyer, followed the historic protocol when he sent his concerns to the Board's President and then addressed the Board on August 5th or whether he was by-passing the Transit Authority's designated representative in violation of the statute.

Chair Zimpher moved an alternative recommendation that the Board refer case number 2014-ULP-08-0134, *Greater Dayton Regional Transit Authority v. Amalgamated Transit Union, Local 1385*, to the Office of SERB's General Counsel for review and analysis; said matter to be resubmitted with a recommendation at the earliest possible SERB meeting. Board Member Brundige seconded the motion.

Chair Zimpher called for discussion.

Chair Zimpher read the following rationale for his recommendation: "After a review of the position papers and briefs pertaining to the above case, and in view of recent judicial opinions in matters perhaps factually similar, I believe another review, focused on all relevant legal precedent on the behavior/activity alleged in the instant matter would be useful for an informed opinion."

Chair Zimpher called for the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

24. Case 2014-ULP-08-0138 North Canton Classified Personnel Association, OEA/NEA v. North Canton City School District Board of Education

The unfair labor practice charge alleged that the School Board violated Ohio Revised Code §4117.11 (A)(1) and (5) by interfering, restraining and coercing employees in the exercise of their guaranteed rights and by refusing to bargain with the exclusive representative.

Information gathered during the investigation revealed that the issue in this case is purely contractual encompassing no arguable statutory violation. A grievance was filed and is proceeding through the grievance-arbitration procedure. The Association did not provide sufficient information or documentation to support the (A)(1) allegation.

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Vice Chair Schmidt moved that the Board dismiss the charge with prejudice for lack of probable cause to believe that an unfair labor practice has been committed and for being purely contractual. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
 Affirmed X Denied _____

25. Case 2014-ULP-09-0187 International Brotherhood of Teamsters Local 957 v. City of Miamisburg

The unfair labor practice charge alleged that the City violated Ohio Revised Code §4117.11 (A)(1) and (5) by interfering, restraining or coercing employees in the exercise of their guaranteed rights by refusing to bargain with the exclusive representative.

Information gathered during the investigation revealed that the City implemented a reimbursement scheme for work shoes, in lieu of the voucher, which appears to be consistent with the procedure outlined in the parties' agreement.

In addition, the instant charge was filed outside of the 90-day statutory time frame. The Union did not provide any evidence to warrant the equitable tolling of the statute of limitations and failed to provide sufficient information or documentation to support the (A)(1) allegation.

Board Member Brundige moved that the Board dismiss the charge with prejudice for lack of probable cause to believe that an unfair labor practice has been committed and for being untimely filed. Vice Chair Schmidt seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
 Affirmed X Denied _____

26. Case 2014-ULP-11-0229 James E. Wolford, Jr. v. City of Lorain

The unfair labor practice charge alleged that the City violated Ohio Revised Code §4117.11 (A)(6).

Information gathered during the investigation revealed that the filing was not within the 90-day statute of limitations. Information warranting equitable tolling of the statute of limitations was requested, but James Wolford has failed to provide such information. Therefore, the charge is untimely filed.

Vice Chair Schmidt moved that the Board dismiss the charge with prejudice for lack of probable cause to believe that an unfair labor practice has been committed and for being untimely filed. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
 Affirmed X Denied _____

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27. Case 2014-ULP-09-0173 Robert N. Conner v. Maplewood Career Center Education Association, OEA/NEA

The unfair labor practice charge alleged that the Association violated Ohio Revised Code §4117.11 (B)(1) by restraining or coercing him in the exercise of his guaranteed rights by providing misleading and inaccurate information regarding retirement benefits.

Information gathered during the investigation revealed that when Robert N. Conner filed this charge, he was no longer a public employee and therefore, lacks standing to file the charge. In addition, the Association advised Mr. Conner regarding the provisions of the State Teachers Retirement System as it relates to years of service and retirement. Thus, Mr. Conner did not provide sufficient information or documentation to support the (B)(1) allegation.

Board Member Brundige moved that the Board dismiss the charge with prejudice for lack of probable cause to believe that an unfair labor practice has been committed, for being purely contractual and on the basis that Mr. Conner lacked standing to file the instant charge. Vice Chair Schmidt seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

28. Case 2014-ULP-09-0179 Jackson City Education Association, OEA/NEA v. Jackson City School District Board of Education

The unfair labor practice charge alleged that the School Board violated Ohio Revised Code §4117.11 (A)(1) and (5) by interfering, restraining or coercing employees in the exercise of their guaranteed rights by refusing to bargain in good faith with the Association.

Information gathered during the investigation revealed that since good faith bargaining is based on the totality of the circumstances, in this instance the District's conduct during negotiations does not rise to the level of a statutory violation. The Charging Party did not provide sufficient information or documentation to support the (A)(1) allegation.

Vice Chair Schmidt moved that the Board dismiss the charge with prejudice for lack of probable cause to believe that an unfair labor practice has been committed. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

29. Case 2014-ULP-10-0208 Jackson City School District Board of Education v. Jackson City Education Association, OEA/NEA

The unfair labor practice charge alleged that the Association violated Ohio Revised Code §4117.11 (B)(3) by refusing to bargain collectively with the District.

Information gathered during the investigation revealed that since good faith bargaining is based on the totality of the circumstances, in this instance the Union's conduct during negotiations does not rise to the level of a statutory violation. The Charging Party did not

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provide sufficient information or documentation to support the (B)(3) allegation.

Board Member Brundige moved that the Board dismiss the charge with prejudice for lack of probable cause to believe that an unfair labor practice has been committed. Vice Chair Schmidt seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

30. Case 2014-ULP-07-0111 International Association of Firefighters, Local 3331 v. City of Perrysburg

The unfair labor practice charge alleged that the City violated Ohio Revised Code §4117.11 (A)(1) and (3) by interfering, restraining, coercing and discriminating against employees in the exercise of their guaranteed rights.

Information gathered during the investigation revealed that on October 9, 2014, the Board dismissed the above charge for lack of probable cause. On November 3, 2014, the Association timely filed a motion for reconsideration, but did not provide any new or additional information meriting reconsideration.

Vice Chair Schmidt moved that the Board deny the Association's motion for reconsideration with prejudice. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

31. Case 2014-ULP-07-0106 Holgate Teachers Association, OEA/NEA v. Holgate Local School District Board of Education

The unfair labor practice charge alleged that the School Board violated Ohio Revised Code §4117.11 (A)(1) and (5) by bargaining in bad faith when it directly dealt with its members by discussing on-going negotiations and by setting conditions on certain subjects of bargaining.

Information gathered during the investigation revealed that on September 11, 2014, the Board ordered the parties to participate in Pre-Determination mediation. As a result, the parties executed a settlement agreement. Paragraph 12 of the agreement constitutes the Association's request to withdraw the charge.

Board Member Brundige moved that the Board construe the SERB- mediated settlement agreement as a motion to withdraw the charge and grant the motion with prejudice. Vice Chair Schmidt seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

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32. Case 2014-ULP-07-0109 City of Girard v. Ohio Patrolmen's Benevolent Association

The unfair labor practice charge alleged that the Association violated Ohio Revised Code §4117.11 (B)(2) and (3) by bargaining in bad faith when it filed a Complaint for Breach of Contract in Common Pleas Court, after filing a grievance, both of which allege the City had failed to follow the shift bidding process outlined in the parties' agreement.

Information gathered during the investigation revealed that on November 6, 2014, the Board ordered the parties to participate in Pre-Determination mediation. However, on November 21, 2014, the City filed a Notice of Withdrawal of the above-referenced charge.

Vice Chair Schmidt moved that the Board construe the City's Notice of Withdrawal as a motion to withdraw and grant the motion with prejudice. Board Member Brundige seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

33. Case 2014-ULP-10-0218 American Association of University Professors - University of Toledo v. University of Toledo
34. Case 2014-ULP-10-0219 American Association of University Professors - University of Toledo v. University of Toledo
35. Case 2014-ULP-10-0220 American Association of University Professors - University of Toledo- v. University of Toledo

Items 33, 34 and 35 were withdrawn pursuant to motions to withdraw.

Board Member Brundige moved that the Board grant the motions without prejudice. Vice Chair Schmidt seconded the motion. Chair Zimpher called for discussion and the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

36. Case 2014-ULP-08-0150 Holgate Local School District Board of Education v. Holgate Teachers Association, OEA/NEA
37. Case 2014-ULP-09-0186 Holgate Teachers Association, OEA/NEA v. Holgate Local School District Board of Education
38. Case 2014-ULP-07-0118 Lakewood Teachers Association, OEA/NEA v. Lakewood Local School District Board of Education
39. Case 2014-ULP-08-0146 AFSCME Local 3501 and Suzanne M. Stall v. Ellen Horsley
40. Case 2014-ULP-09-0166 Amalgamated Transit Union, Local 268 v. Greater Cleveland Regional Transit Authority

VII. ADMINISTRATIVE MATTERS:

SERB REGULAR SCHEDULED MEETING DATES:

- **January 15, 2015**
- **February 12, 2015**
- **March 12, 2015**
- **April 16, 2015**
- **May 07, 2015**
- **June 04, 2015**

SYSTEM UPDATES:

- **Employee Organization Annual Report Filings:** For fiscal year ending **06/30/2014** a total of 42 Employee Organizations were required to report not later than **11/15/2014**. All Employee Organizations have filed and are therefore in compliance.
- **State-wide Cost Allocation Plan (SWCAP) FY 2014:** In collaboration with Elaine Stevenson, the SWCAP was completed and submitted on November 18, 2014 to the Office of Budget and Management, State Accounting Department.
- **FY 2015 – 2017 Affirmative Action Plan:** In coordination with Marcie Scholl, EEO Coordinator for SERB, the FY 2015- 2017 Affirmative Action Plan was submitted on December 03, 2014 to the Equal Opportunity Division of DAS.
- **FY 2014 Succession Plan:** The FY 2014 Succession Plan was submitted to CSA on December 09, 2014. They will submit it to DAS not later than December 12, 2014. This plan addressed the major project initiatives for the coming year; the projection for retirements and related succession planning.
- **Contract Administrative Law Judge:** A Personal Services Contract for a SERB Administrative Law Judge (ALJ) has been entered into with Sarah Rudolph Cole, Esquire. She will be filling the void created by the resignation of former Contract ALJ, Beth Jewell, who transferred to Silver Springs, Maryland. Sarah Cole is a Professor of Law at the Ohio State University Moritz College of Law, specializing in labor law and alternative dispute resolution programs. She is a graduate of the University of Chicago Law School. Until this most recent SERB appointment, she has also been a Fact Finder for the agency. In addition to her academic activities, Ms. Cole has engaged in collective bargaining, arbitration proceedings, and many mediation experiences. She has written and published extensively on mediation, arbitration, and other facets of the labor/management process. She is well versed in O.R.C. §4117 and will bring a wealth of talent to the organization and those we serve. She will begin with SERB on January 15, 2015.
- **Emergency Notification System:** Per DAS Directive HRD-11, Don Collins and Christine Dietsch have been designated Public Safety Emergency Notification System contacts for SERB by the Ohio Emergency Management Agency. Training was held on November 20, 2014 and a test of the system was conducted on November 25, 2014.

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Should an emergency be declared, the SERB emergency contact list will be activated to notify all staff and Board members. Craig Zimpher, Christine Dietsch, and Don Collins are listed as Essential Employees should the need arise to report to work in an emergency situation.

- **Audit Report for years ended June 30, 2013 and June 30, 2014:** SERB received the Notification of Filing of Audit Report on December 01, 2014 from the Ohio Auditor of State. Prior to that, an Exit Conference was held with representatives from the Office of Auditor of State to review a draft of the Management Letter. There were three areas expressed in the Management Letter:
 1. To reaffirm management's responsibility to design and implement internal control policies and procedures to reasonably ensure specific financial objectives will be achieved as relates to the OAKS and CSA processes.
 2. Recommended that the Board take additional steps to ensure all new and transferring employees have been provided information about the fraud reporting system and the means of reporting fraud within the first 30 days of employment.
 3. Recommended management review their policies and procedures periodically to reasonably ensure professional and statutory requirements and operational objectives will be achieved.

SERB provided a written response to the report.

TRAINING:

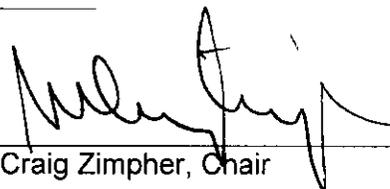
- **SPBR Academy:** SPBR Academy is scheduled for February 24, 2015 at the Crowne Plaza – North. To date there are 31 registrations.
- **SERB Academy:** Planning is underway for the next SERB Academy scheduled for April 09 and 10, 2015 at the Crowne Plaza – North.

IX. ADJOURNMENT:

Board Member Brundige moved that the Board adjourn the meeting. Vice Chair Schmidt seconded the motion. Chair Zimpher called for the vote.

Vote: BRUNDIGE: Yes SCHMIDT: Yes ZIMPHER: Yes
Affirmed X Denied _____

The Board meeting adjourned at 11:00 a.m.

/s/ 
W. Craig Zimpher, Chair